**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| **Implementation of Section 304 of the Telecommunications Act of 1996** | ) | **CS Docket No. 97-80** |
| **Commercial Availability of Navigation Devices** | ) | |
| **Compatibility Between Cable Systems and Consumer Electronics Equipment** | ) | **PP Docket No. 00-67** |

# COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC., METRO-GOLDWYN-MAYER STUDIOS INC., PARAMOUNT PICTURES CORPORATION, SONY PICTURES ENTERTAINMENT INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS LLLP, AND THE WALT DISNEY COMPANY

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The Motion Picture Association of America, Inc. ("MPAA"), Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, and the Walt Disney Company hereby submit these Comments in response to the Commission's Second Further Notice of Proposed Rulemaking.[1]

## INTRODUCTION

The Commission has adopted a set of regulations governing the compatibility of devices for use with unidirectional cable services. The Commission's Plug & Play Order will augur a new era in which cable devices will be bought and sold at retail and will connect to an

[1] *See* Second Report and Order and Second Further Notice of Proposed Rulemaking, *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment*, C.S. Docket No. 97-80, P.P. Docket No. 00-67, FCC 03-225 (rel. Oct. 9, 2003) ("Plug & Play Order").

increasingly interdependent network of digital devices in consumers' homes. MPAA believes that this new era will, if managed correctly, offer consumers exciting new opportunities to obtain and view content closely following its theatrical release, more conveniently and in higher quality than ever before. The revolution in consumer devices that is approaching will thus benefit content owners, consumers, distributors, and manufacturers alike. Nevertheless, as implementation of the regulation goes forward, the Commission must carefully consider the security of content provided in the new cable devices, and how that security is to be achieved.

## I. The Commission Should Adopt Marketplace Standards and Procedures for Authorizing New Output Protection Technologies and Recording Methods

The Commission has asked a series of questions pertaining to the selection and administration of approvals for digital output and recording technologies under the DFAST License. MPAA respectfully submits that:

- CableLabs should be the initial arbiter of the approval process, as DFAST Licensor;
- CableLabs must adopt a process by which meaningful opportunity is given for objections from affected content owners, device/software manufacturers (herein collectively, "manufacturers") , and/or MVPDs; and if a significant number of such objections are registered, the determination is submitted to private binding arbitration pursuant to fair and conventional standards and procedures;[2]
- The standards to be applied by both DFAST and, upon review, the arbitrator(s) should be the marketplace criteria (including the "at least as effective" criterion) that we have submitted to the Commission in our concurrent response to the Broadcast Flag FNPRM.

[2] We believe that these standards and procedures should be modeled on those of the Change Management process of the 5C License arrangement, which are typical of similar processes employed in a number of other private sector content protection technology arrangements like DFAST.

For convenience, a copy of our response to the Broadcast Flag FNPRM is attached as an Annex to this filing. The criteria are described in Section x.21(c)(1)(A) - (D) of Appendix A to the Annex, and discussed in Part I of the Annex. These criteria would be adjusted to the particular context of DFAST Controlled Content, including the use of a private arbitrator to review initial determinations, the participation of appropriate MVPDs, and the need for numerical copy control functionality and management of copy control information.

This model is essentially that followed in other private sector content protection technology arrangements like DFAST. There is no compelling or even demonstrable reason to abandon it in the context of Unidirectional Cable Products; indeed, there is good reason *not* to do so.

This approach has been used and relied on by a broad range of content protection systems in the motion picture and television businesses, affecting innumerable content owners, manufacturers, MVPDs, and consumers. It is workable, fair, and efficient. The standards are quite objective, clear, and capable of wholly impartial administration and measurement. (In connection with the Commission's request for our views on other so-called objective standards, please see Part I of our response to the Further Notice of Proposed Rulemaking ("FNPRM") in the Broadcast Flag proceeding, attached hereto.) These standards are far less ambiguous and subject to manipulation than others would be. They are totally technology-agnostic, and may be applied equally to "digital rights management, wireless and encryption-based technologies," Plug & Play Order ¶ 83, as well as any others. This model has contributed to the development and deployment — whether for success or failure, as the marketplace determines — of exciting new media and programming offerings to the public. It seems certain that, at the very least, these

offerings and media would have been greatly hindered by (a) discomfort of manufacturers or content owners over the ability to adopt improved technologies, deal with obsolescence, continue to meet fair competition, understand design commitments, and secure valuable content; and (b) the intervention of government tribunals in case by case determinations of product configuration and security issues under private licenses. This model benefits copyright owners, manufacturers, MVPDs, and the consuming public by eliminating that discomfort and avoiding any need for that intervention.

There is no reason to impose upon the marketplace a different or alternative set of criteria. We are at a loss to understand why a technology that has not been accepted by the directly involved parties, indeed a technology that is less effective at securing content than one voluntarily adopted by such stakeholders, should be imposed on them. Imposing use of a lesser technology will only serve to drive content away from cable systems toward content delivery mechanisms that can guarantee an appropriate level of security. Impoverishing cable offerings in that manner cannot be the desired goal of this proceeding.

MPAA acknowledges and applauds the Commission's seeding and oversight of the OpenCable process and CableLabs initiative. Although we have differed with aspects of the Commission's regulations, we believe the Commission should maintain its important and helpful oversight role with respect to administration of the DFAST License, including receipt and public discussion of periodic reports on the initial determinations and arbitrations as well as other aspects of DFAST administration. However, we do not believe the Commission should inject itself into what is essentially case-by-case adjudication of disputes under a private-sector arrangement.

We respectfully direct the Commission to Parts II and III of our response to the Broadcast

Flag FNPRM (annexed hereto) for discussion of its common FNPRM questions on the scope of distribution to be permitted and withdrawal of authorization, respectively.

## II. The Commission Should Permit Cable Operators to Implement Down-Resolution for Non-Broadcast Content

The issue of whether MVPDs should be allowed to use image constraint has generated much heat in this proceeding, but shed comparatively little light. Image constraint (or "down-resolution") is one possible solution to the "analog hole" problem – namely that, currently, there is no means of enforcing Copy Never and Copy One Generation rules when sent over analog outputs. Instead of turning off such outputs completely, content owners may decide instead to allow analog outputs but limit the damage from the analog hole for a given piece of content by requiring the resolution of analog outputs be constrained to Standard Definition levels. Another possible solution to the "analog hole" is the gradual retirement of analog outputs from Plug & Play and other devices. The Analog Reconversion Discussion Group has gathered information on still other options. Many of these other options, however, will take time to implement. Image constraint capability, which is available now, is thus an important tool in the content protection arsenal that distributors and content owners must have available to them in order to bring high-value content to consumers. Commission foreclosure of image constraint or any other possible solution to the analog reconversion problem is both premature and unwarranted.

Contrary to what some in this proceeding have argued, giving Plug & Play devices the capability to constrain the image passed to its analog outputs will benefit consumers, not harm them. It is important to recognize that, one way or another, there will be a solution to the analog hole. The perpetual availability of content over unprotected high-definition analog outputs is not an option. Without image constraint or some other solution to the analog hole, devices with

analog outputs will lack the security necessary to receive very high-value content. The critics of image constraint thus miss a fundamental point. If image constraint capability is built into a device, it will not take anything away from a consumer that that consumer would otherwise receive. For example, image constraint capability would not rob a consumer of a 1080i display of a newly released hit motion picture, "Movie X." Rather, a ban on image constraint capability, if adopted, would rob the consumer of the ability to watch Movie X at all in an early-window time frame, because that consumer's cable or satellite device would not be secure enough to receive it. The Commission should prevent such harm to consumers by ensuring that cable and satellite operators have the ability to invoke image constraint for the analog outputs of receiving devices on their systems.

The Commission has also requested comment on the "potential impact" of image constraint "on consumers with DTV equipment that only has component analog outputs." Currently, image constraint would have no noticeable effect on such consumers, because current 1080i displays cannot fully resolve a 1080i signal, and as a result, a recorded constrained image will appear exactly the same as the original 1080i image on such displays. In the future, once displays that fully resolve 1080i images enter the market, image constraint will affect the viewing of recordings made on downstream devices from devices with only component analog outputs. However, it seems unlikely, given the digital transition, that future DTV devices will be manufactured with *only* component analog outputs, unless it is part of a concerted effort to subvert digital content protection. Digital outputs not only provide a higher-quality signal than analog outputs, but will be necessary for interoperability going forward. Therefore, the number of consumers tangibly affected by image constraint because of a lack of digital outputs should be low.

As for consumers with devices that have only component analog inputs, again, in the future, it seems unlikely that device manufacturers will continue to manufacture such devices. It should be noted that many such devices that exist now, such as older-model DVD recorders, are incapable of recording 1080i content anyway, and thus the issue of image constraint is a moot point for such devices. Finally, the Commission requested comment "on the potential impact of down-resolution upon consumers who own DTV equipment with both digital and analog outputs." The impact will be that which is intended in the digital transition: such consumers will be motivated to switch to digital connections, which will offer the higher-quality picture, and in the process pave the way for secure devices with all-digital connections.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
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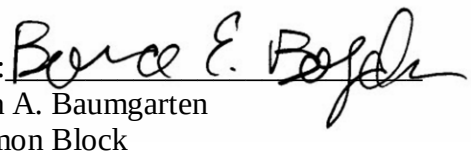
By: 

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